No. 87-1340

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

CITY OF PHILADELPHIA,

Petitioner

v.

DISTRICT COUNCIL 33, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, BY EARL STOUT, as Trustee ad Litem; and EARL STOUT; ALBERT JOHNSON; FRANCIS ROONEY; ROBERT LUCAS; JAMES RAWLS; DONALD GALLIMORE; EDWARD SIMPKINS; LEONARD TILGHMAN; ANN COHEN; GEORGE WROTEN; and EARL WILLIAMS, Trustees of DISTRICT COUNCIL 33 MUNICIPAL WORKERS HEALTH AND WELFARE FUND,

Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI OF THE CITY OF PHILADELPHIA

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COUNTER-STATEMENT OF QUESTION PRESENTED

Where the Supreme Court of Pennsylvania *has not* decided a federal question in any way in conflict with the decisions of another state court of last resort, and where the Supreme Court of Pennsylvania *has not* decided an important question of federal law and *has not* decided a federal question in a way in conflict with the applicable decisions of this Court, and where the Supreme Court of Pennsylvania *has not* decided a question where any right or privilege under the Constitution or statutes of the United States is involved, should not this Court decline to exercise its discretionary judicial authority and deny the City of Philadelphia's Petition for Writ of Certiorari in the instant matter when there are no special and important reasons therefore?

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RULE AND STATUTE IN QUESTION

Rule 17 of the Rules of the Supreme Court of the United States provides:

"Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important

reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
>
> (c) When a state court or a fedral court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari."

42 Pa.C.S., §724(a) provides:

"Allowance of appeals from Superior and Commonwealth Courts

(a) General rule. — Except as provided by section 9871(f) (relating to limitation on additional

appellate review), final orders of the Superior Court and final orders of the Commonwealth Court not appealable under section 723 (relating to appeals from Commonwealth Court) may be reviewed by the Supreme Court upon allowance of appeal by any two justices of the Supreme Court upon petition of any party to the matter. If the petition shall be granted, the Supreme Court shall have jurisdiction to review the order in the manner provided by secton 5105(d)(1) (relating to scope of appeal)."

COUNTER-STATEMENT OF THE CASE

This is a simple breach of contract action arising under state law. Therefore, review by this Court on Writ of Certiorari is totally inappropriate, as being without the scope and breadth of this Court's judicial discretionary authority under Rule #17 of this Court's Rules. Since the Supreme Court of Pennsylvania *has not* decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals, *has not* decided an important question of federal law which has not been, but should be, settled by this Court, *has not* decided a federal question in a way in conflict with applicable decisions of this Court, *has not* decided any federal question whatsoever, and *has not* decided any federal constitutional question or issue which this Court should address, this Court should, in accordance with the guidelines of Rule #17 of the Rules of the Supreme Court of the United States, deny the Petition of the City of Philadelphia for a Writ of Certiorari.

The genesis of this litigation is rooted in a contract provision contained in a Collective Bargaining Agreement that was entered into between Petitioner, City of Philadelphia, and Respondent, District Council 33, AFSCME, the City of Philadelphia's "blue collar" municipal worker's union, as of July 1, 1975. The contract provision in question addressed the extent to which the

City of Philadelphia was to fund the District Council 33 Health and Welfare Fund by the payment of monthly monetary benefits for the health and medical care of members of District Council 33 and their families. From July 1, 1975 through the period of time covered by the 1982-1984 Collective Bargaining Agreement involved in the instant litigation, the City of Philadelphia's contractual obligation, in providing health and medical benefits to its municipal "blue collar" workers, was to make payments to the District Council 33 Municipal Workers Health and Welfare Fund in the following manner in order to provide the following defined health and medical benefits:

> "Each full-time employee in a class or position represented by District Council #33 shall have health and welfare benefits as such benefits are presently defined including major medical family coverage, under the Blue Cross/Blue Shield group health medical plan, with the City paying the full contribution of such benefits, to District Council 33 Health and Welfare Fund."

The purpose of including this paragraph in the Collective Bargaining Agreement entered into between the City of Philadelphia and District Council 33 for the period extending from July 1, 1982 through June 30, 1984, was to continue to provide not less than that same level of health and medical benefits as was provided by District Council 33 to its members prior to and contemporaneous with the execution of the Collective Bargaining Agreement effective July 1, 1982 (i.e. 365 day inpatient hospitalization with no co-pay provisions by union members, no deductibles, and no cap on the total amount of coverage for health and medical care for each union member and his dependents, including full and complete payment of all hospital, medical and doctor bills).

In January, 1983, during the term of the Agreement in question, the City of Philadelphia was contributing *only* $92.00 per covered employee/union member per month to the District Council 33 Health and Welfare Fund. This amount was *substantially less* than the City's monthly contribution per union member per month to all of the other municipal workers' unions' health plans, notwithstanding the fact that *District Council 33 was providing its members with a full "100 percent" health care coverage plan (which the other unions were not)*, for which the City of Philadelphia was contractually obligated to pay the District Council 33 Health and Welfare Fund a monthly amount equivalent to the rate that Blue Cross would have charged to provide a level of health care benefits consistent with that full "100 percent" coverage that was in fact being provided by District Council 33 to its members.

Although the City of Philadelphia was obligated, under the terms of the Agreement, to procure an accurate rate quotation from Blue Cross with respect to the determination of the amount of the monthly contribution it was obliged to make, per union member per month, to the District Council 33 Health and Welfare fund, the City of Philadelphia *never*, during the term of the contract period involved in this litigation or prior thereto, requested Blue Cross to price out or prepare a cost rating for a level of health care benefits for members of District Council 33 at full "100 percent" coverage for all medical expenses including, but not limited to, 365 day in-patient hospitalization, with no co-pay provisions or obligations, no deductibles, no cap on the total amount of coverage for health and medical care for each union member and his or her covered dependent family members, and full and complete payment of all hospital, medical and doctor bills, *as the Chancellor in Equity found the City was obligated to provide and pay for under paragraph 23(B) of the Collective Bargaining Agreement in force* between the City of Philadelphia and

District Council 33 *for the period extending from July 1, 1982 through and including June 30, 1984.* (See A-14). As a consequence of the City's underpayment, at the rate of $92.00 per covered union member per month, the District Council 33 Health and Welfare Fund had insufficient monies to pay for the obligations incurred for the hospital and medical expenses of covered union members and their dependent family members.

After both a Preliminary Injunction Hearing and a Final Injunction Hearing, the Chancellor in Equity made Findings of Fact and Conclusions of Law and granted District Council 33 permanent injunctive relief on the grounds that the City of Philadelphia had breached its contractual obligation to provide full one hundred percent (100%) coverage for all hospital, medical and doctor bills, with no co-pay provisions, obligations or deductibles, and no "cap" on the total amount of coverage for health and medical care.

In that regard, the Chancellor in Equity made the following Findings of Fact and Conclusions of Law in connection with his grant of permanent injunctive relief to District Council 33 and his determination that the City of Philadelphia had breached its contractual obligation under the contract provision quoted above during the period involved in the instant litigation (January 1, 1983 through and including June 30, 1984):

FINDINGS OF FACT

"1. Since July 1, 1975, the City of Philadelphia ("City") and District Council 33, AFSCME ("Union"), have been bound by an agreement, embodied in a 'Memorandum of Agreement' (P-1), and subsequently in a Collective Bargaining Agreement (P-2), which provides in relevant part:

> Each full-time employee in a class of position represented by District Council #33 shall

have health and welfare benefits as such benefits are presently defined including major medical family coverage, under the Blue Cross/Blue Shield group health plan, with the City paying the full contribution of such benefits, to District Council 33 Health and Welfare Fund." (A-18—A-19).

"10. The city agreed to 'provide 100 percent medical coverage to city employees' consistent with the 100 percent medical coverage provided by District Council 33 to its union members prior to and at the time of the contract negotiations." (A-21).

"18. The Agreement requires that defendant pay over to the Health and Welfare Fund such amount of money per union member per month as it would cost to purchase a plan that would provide the same full level of health care benefits as provided by District Council 33 to its members immediately preceding the effective date of the current Agreement." (A-23).

"24. The City has been paying $92.00 per union member per month for Health and Welfare benefits since July 1, 1981 and up until the present time, despite acknowledgements by members of the City administration and its counsel that more money is owed to the fund under the terms of the 1982-1984 Collective Bargaining Agreement." (A-24).

"26. District Council 33 relied on the assumption that the City would fairly and honestly procure an accurate rate quotation from Blue Cross with respect to determining the amount of contribution it was obliged to make per union member per month to the Fund, pursuant to its contractual obligation so to do under the Agreement (P-1)." (A-24).

"5. The City of Philadelphia has never requested Blue Cross to price out or prepare a cost rating for a

level of health care benefits for members of District Council 33, at full 100 percent coverage for all of medical expenses including, but not limited to, 365 day in-patient hospitalization, with no co-pay provisions or obligations, no deductibles, no cap on the total amount of coverage for health and medical care for each union member and his or her dependent family members, including full and complete payment of all hospital, medical and doctor bills, as the City was obligated to provide and pay under paragraph 23(B) of the Collective Bargaining Agreement in force between the City of Philadelphia and District Council 33 for the period extending from July 1, 1982 through and including June 30, 1984." (A-14.).

"27. Members of Union have been denied health care and medical services and benefits because of the Union's inability to pay the bills of medical health care providers due to the City's breach of its Collective Bargaining Agreement (P-2) with Union." (A-24).

"29. Defendant's breach of its contractual obligation under the Agreement (P-2) has caused union members and their families to suffer irreparable harm by being denied necessary health care services due to the Union's inability to pay for required medical services for its members and their dependents." (A-24).

CONCLUSIONS OF LAW

"41. On the basis of the record before the Court, the Union's request for a preliminary injunction increasing the amount of the City's payment to the Fund shall be granted." (A-26).

"The Court concludes, as a matter of law, that the preliminary injunction entered April 27, 1984, shall

be made final: but shall be modified to provide that the defendant City of Philadelphia pay to the plaintiff District Council 33 Health and Welfare Trust the sum of $178.00 per member per month for the period January 1, 1983 to June 30, 1984." (A-17—A-18).

After the Chancellor's permanent injunctive relief was granted, both District Council 33 and the City of Philadelphia filed Post-Trial Motions in the nature of Exceptions to the Chancellor's Final Order. The Chancellor denied all Exceptions filed by both parties.

Thereafter, timely Appeals were filed by both parties in the Superior Court of Pennsylvania. The Superior Court of Pennsylvania entered a Judgment Order and Opinion, affirming the Order of the Chancellor in Equity and dismissing the Appeals of both parties. (A-5—A-11). The City of Philadelphia, thereafter, filed a Petition for Reargument in the Superior Court of Pennsylvania, alleging that the Superior Court had decided the matter based upon a critical misapprehension of fact, and arguing, consequently, that Reconsideration and Reargument of the Appeal in that Court was necessary. Said Petition for Reargument was denied by a *Per Curiam* Order of the Superior Court of Pennsylvania.

The City of Philadelphia, thereafter, filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania, which Petition was denied by that Court on March 3, 1987. (A-3). Thereafter, the City of Philadelphia filed a Petition for Reconsideration of the Denial of its Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, which Petition for Reconsideration was similarly denied by the Supreme Court of Pennsylvania on November 5, 1987. (A-1).

The instant Petition for Writ of Certiorari in this Court followed. It is respectfully submitted that said Petition for Writ of Certiorari should be denied for the following reasons.

SUMMARY OF ARGUMENT

The issues raised by Petitioner in its Writ of Certiorari do not merit review by this Court under its Rule #17 certiorari considerations.

The underlying breach of contract claim in this case arises under the laws of the Commonwealth of Pennsylvania and presents no federal question that merits consideration by this Court and no question involving any right or privilege under the Constitution or statutes of the United States.

The "allowance of appeal" discretionary jurisdiction of the Supreme Court of Pennsylvania is strikingly similar to the discretionary scope of certiorari review afforded by this Court, under Rule #17 of the Rules of the Supreme Court of the United States, and, as such, Petitioner's constitutional rights have not been violated by virtue of the Supreme Court of Pennsylvania's having refused to grant both Petitioner's Petition for Allowance of Appeal and its Petition for Reconsideration of the Denial of said Petition for Allowance of Appeal.

ARGUMENT

The reasons advanced by Petitioner, City of Philadelphia, in support of its Petition for a Writ of Certiorari, are frivolous, not germane to the substantive issues that are involved in this litigation and were in fact considered by the trial and appellate courts of the Commonwealth of Pennsylvania below and do not present the type of legally justiciable issues that merit consideration by this Court under its Rule #17 certiorari considerations

This case involves a simple breach of contract claim under the laws of the Commonwealth of Pennsylvania. The trial court determined that the City of Philadelphia had breached a provision of the Collective Bargaining Agreement in effect between the City of Philadelphia and its municipal "blue collar" workers union respecting the amount of the monthly contribution that the City of

Philadelphia was obligated to make for each union worker's health, welfare and medical benefits.

The contractual provision in question arises under the law of the Commonwealth of Pennsylvania and, as such, no federal question is involved in this litigation. Nor have the courts of Pennsylvania below decided any important question of federal law, nor a question where any right or privilege under the Constitution or statutes of the United States is involved. Accordingly, the considerations governing review on certiorari, as articulated in Rule 17 of the Rules of the Supreme Court of the United States, do not touch upon or involve any of the issues involved in the instant litigation.

With respect to Petitioner's contention that it was somehow constitutionally compromised by having had its Petition for Allowance of Appeal to the Supreme Court of Pennsylvania denied, while District Council 33's Petition for Allowance of Appeal was granted[1], it must be observed that the Supreme Court of Pennsylvania's judicial discretionary authority, under 42 Pa.C.S. §724(a), is not unlike the discretionary certiorari authority of this Court, as articulated in Rule 17 of the Rules of this Court.

Under 42 Pa.C.S. §724(a), the Supreme Court of Pennsylvania *may* review the final Orders of the Superior Court upon "allowance of appeal" by any two Justices of the Supreme Court upon Petition of any party to the matter. This is a discretionary decision of the Supreme Court of Pennsylvania as to whether or not a matter should in fact be reviewed by it, strikingly similar to the discretionary scope of certiorari review afforded by this Court under Rule 17 of the Rules of the Supreme Court of the United States. Just as this Court's scope of certiorari review is not as a matter of right to the litigants, but is extended solely in the exercise of this Court's judicial discretion "only when there are special

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1. See Appendix C (A-3).

and important reasons therefor", so too is the Supreme Court of Pennsylvania's "allowance of appeal" scope of review dependent upon that Court's exercise of its judicial discretion, and not as a matter of right.

The Supreme Court of Pennsylvania's denials of both the City of Philadelphia's Petition for Allowance of Appeal (A-2) and its Petition for Reconsideration of that Denial (A-1) were neither arbitrary nor capricious. It was in the exercise of the Supreme Court of Pennsylvania's allowance of appeal discretionary authority that it denied the City of Philadelphia's Petition for Allowance of Appeal, while granting District Council 33's Petition for Allowance of Appeal in connection with a totally separate and distinct issue (A-3)[2].

Finally, since the City of Philadelphia submits, in its Petition for a Writ of Certiorari, that "[t]he sole issue has always been, based upon the proper interpretation of the contract, how much was the City required to pay" (p. 13), it should be observed that that issue has now been ultimately resolved and finally determined by the Supreme Court of Pennsylvania in its Order and Opinion of February 26, 1988 (Supp. App., SA-1–SA-7)[3]. Therefore, by the City of Philadelphia's own admission, there are no longer any remaining issues of any kind to be resolved in connection with the instant litigation.

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2. See Footnote 1, *supra*. The limited issue considered by the Supreme Court of Pennsylvania upon the grant of District Council 33's Petition for Allowance of Appeal was the sustainability of the Chancellor in Equity's Finding of Fact as to how much money, per union member per month, the City of Philadelphia was required to pay for the cost of the medical coverage under the contract. (See Footnote 3, *infra*).

3. See Supp. App. (SA-1–S-7), wherein the Supreme Court of Pennsylvania reviewed the Finding of Fact of the Chancellor in Equity as to how much money the City was required to pay, per union member per month, and remanded the case to the Court of Common Pleas of Philadelphia County for correction of its findings and for entry of an Order that is consistent with those findings.

For the foregoing reasons, the Petition for Writ of Certiorari of the City of Philadelphia should be denied.

PETITIONER'S AUTHORITIES DISTINGUISHED

Although the courts of Pennsylvania recognize an exception to the general rule that an issue not raised in the lower court cannot be considered in support of an appeal when a question of public policy is involved (*see Muse-Art Corp. v. City of Philadelphia*, 95 A.2d 543 (Pa. Supreme Ct., 1953)), such exception is not germane in the present setting for a variety of reasons, not the least of which is the fact that the City of Philadelphia has failed to identify or articulate any "well defined and dominant" public policy that has conceivably been violated or undermined by virtue of the courts of the Commonwealth of Pennsylvania having now enforced the provision of the Collective Bargaining Agreement involved in the instant litigation relating to the payment of health, medical and welfare benefits to members of District Council 33 by the City of Philadelphia.

Petitioner's reliance upon *W.R. Grace & Co. v. Rubber Workers Local 759*, 461 U.S. 757 (1983), in support of its "public policy" argument, is sorely misplaced. In that case, this Court granted certiorari "to decide the important issue of federal labor law that the case presented." (461 U.S. 764). No such important issue of federal law is involved in the instant matter. This case involves simply an issue of breach of contract under the law of the Commonwealth of Pennsylvania.

Moreover, this Court recognized, in the *W.R. Grace* case, that in order for a court to refrain from enforcing a contract on the ground that it is violative of some explicit public policy, "[s]uch a public policy . . . must be well defined and dominant, and is to be ascertained 'by reference to the laws and legal precedents and *not from some general considerations of supposed public interests.*'" (461 U.S. 766, Citations Omitted, Emphasis

Added). No such well defined and dominant public policy has been articulated by Petitioner in the instant matter so as to have required the courts of Pennsylvania to refrain from enforcing the contractual provision that was embodied in the series of Collective Bargaining Agreements that were in force between the City of Philadelphia and District Council 33 for a period of more than eight (8) years prior to the time that the litigation was initiated in the instant matter.

This Court reiterated its admonition, as set forth in the *W.R. Grace* case, in *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. ____, 108 S.Ct. 364 (1987), wherein this Court stated, in reversing the Court of Appeals for the Fifth Circuit for having set aside an arbitrator's award on public policy grounds:

> ". . . A court's refusal to enforce an arbitrator's *interpretation* of a collective-bargaining agreement is limited to situations where the contract as interpreted would violate 'some explicit public policy' that is 'well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.' . . . An alleged public policy must be properly framed under the approach set out in *W.R. Grace*, and the violation of such policy must be clearly shown." (108 S.Ct. 367, Citations Omitted, Emphasis in Original).

The enforcement of the terms of a Collective Bargaining Agreement between the City of Philadelphia and its largest single employee union, *i.e.* the "blue collar" workers of District Council 33, is of far greater public importance to insure the integrity of the Collective Bargaining Process, than some supposed and/or contrived general public interest considerations (conjured up more than five years after the effective date of the Collective Bargaining Agreement in question) as to why

the contract provision at issue in this litigation is somehow violative of public policy. Nowhere in the City of Philadelphia's Petition for a Writ of Certiorari does it explicitly identify the alleged public policy that has been violated. That is simply because there has been no public policy violated or infringed upon in this setting.

A review of the decisions of the trial court (A-12 – A-18 and A-18 – A-27), the Superior Court of Pennsylvania A-5 – A-11), and the Supreme Court of Pennsylvania (SA-1 – SA-7) reveals that the courts of the Commonwealth of Pennsylvania have given careful and exhaustive attention to the issues involved in the instant litigation, with due concern and consideration for the rights of both the City of Philadelphia, and its tax-paying public, and the "blue collar" workers of District Council 33, the City of Philadelphia's largest municipal workers union. The rights and obligations of the parties, having been exhaustively considered and fairly and finally determined and resolved by the courts of the Commonwealth of Pennsylvania, must now be enforced.

Petitioner's harangue that the Supreme Court of Pennsylvania has consistently held that public employers are estopped from challenging the illegality of collective bargaining contract terms in the courts and has, therefore, somehow adhered to a state rule of law of abstaining from entertaining and considering a claim of nonconformity with public policy by signatories to public sector collective bargaining agreements is a total and absolute distortion of the law of the Commonwealth of Pennsylvania as articulated by the Supreme Court of Pennsylvania.

Fraternal Order of Police v. Hickey, 452 A.2d 1005 (Pa. Supreme Ct., 1982), acknowledges the Commonwealth of Pennsylvania's adherence to the rule of law that a governing body may not be mandated to carry out an illegal act, but recognizes that . . .

> "a distinction must be drawn between situations where an arbitration panel attempts to mandate a governing body, over its objection, to carry out an illegal act and situations where the governmental unit employer attempts to belatedly avoid compliance with a term of a bargaining agreement it voluntarily agreed to during the bargaining process and thereby secure an unfair advantage in the bargaining process." (452 A.2d 1008).

In the *Hickey* case, the Supreme Court of Pennsylvania determined that a provision of a collective bargaining agreement that was voluntarily agreed to by the City of Scranton during the collective bargaining process could not be objected to by the City or its officials on the basis of its alleged illegality after the City and its employee unit had functioned and operated under the terms of the agreement for more than five years.

In citing its previous opinion in *Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh*, 391 A.2d 1318 (Pa. Supreme Ct., 1978), the Supreme Court stated:

> ". . . To permit a public employer to secure an advantage in the bargaining process by agreeing to a term and subsequently avoid compliance by belatedly asserting that term's illegality is equally inimical to the integrity of the bargaining process and undermines the harmonious relationship it was designed to foster. As noted in *Pittsburgh*, supra:
>
> > 'To permit an employer to enter into agreements and include terms . . . which raise the expectations of those concerned, and then to subsequently refuse to abide by those provisions on the basis of its lack of capacity [or the asserted illegality of the term] would invite discord and distrust and create an atmosphere

> wherein a harmonious relationship would virtually be impossible to maintain.'
>
> . . ." (452 A.2d 1007, Citations Omitted, Emphasis in Original).

Accordingly, the Supreme Court of Pennsylvania concluded, in the *Hickey* case, that it would be inimicable to the best interest of the Collective Bargaining Process and run counter to the statutorily mandated obligation to bargain in good faith to permit the governmental employer to avoid the performance of a term of a collective bargaining agreement by questioning its legality after having received the advantages that flowed from the term's acceptance by both parties to the agreement in the first instance. That rationale is equally applicable to the facts of the case at Bar.

Finally, Petitioners suggestion that public employers are denied the right to assert illegality defenses to the terms of collective bargaining agreements by the courts of the Commonwealth of Pennsylvania is patently absurd. Rather, the courts of the Commonwealth of Pennsylvania, in an effort to maintain and uphold the good faith Collective Bargaining Process, require "that questions as to the legality of the . . . terms of a collective bargaining agreement . . . be resolved by the parties to the agreement at the bargaining stage", rather than after the fact. See *Grottenhaler v. Pennsylvania State Police*, 410 A.2d 806, 809 (Pa. Supreme Ct., 1980), and *Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, supra* at 1322-1323.

Based upon the entire record in this case, the Supreme Court of Pennsylvania properly denied both the City of Philadelphia's Petition for Allowance of Appeal and Petition for Reconsideration of such Denial and, in so doing, did not deprive the City of Philadelphia of any of its rights or adopt a position which seriously conflicts with decisions of this Court.

CONCLUSION

It is respectfully submitted that Petitioner has failed to sustain its burden of establishing, under Rule 17 of the Rules of the Supreme Court of the United States, that there are special and important reasons for the grant of the City of Philadelphia's Petition for Writ of Certiorari in this matter.

The decision below of the Supreme Court of Pennsylvania did not involve an important question of federal law and did not involve the decision of a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals; neither did the Supreme Court of Pennsylvania decide a federal question in a way in conflict with applicable decisions of this Court, nor did it decide any federal constitutional question or issue which this Court should address.

Accordingly, it is respectfully suggested that this Court should, in accordance with the guidelines of Supreme Court Rule 17, deny the Petition of the City of Philadelphia for a Writ of Certiorari.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

DISTRICT COUNCIL 33, AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, AFL-CIO, by EARL STOUT, as Trustee ad Litem; and EARL STOUT; ALBERT JOHNSON; FRANCES ROONEY; ROBERT LUCAS; JAMES RAWLS; DONALD GALLIMORE; EDWARD SIMPKINS; LEONARD TILGHMAN; ANN COHEN; GEORGE WROTEN; and EARL WILLIAMS, Trustees of DISTRICT COUNCIL 33 MUNICIPAL WORKERS HEALTH AND WELFARE FUND 3001 Walnut Street, Philadelphia, Pennsylvania, 19104. Appellants	:	No. 32 E.D. Appeal Docket 1987
v.	:	
CITY OF PHILADELPHIA 1401 Arch Street Room 812 Philadelphia, Pennsylvania 19107	:	

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the ORDER of the SUPERIOR COURT, be, and the same is hereby REVERSED, AND THE CASE REMANDED.

Marlene F. Lachman, Esq.
Prothonotary

Dated: 2/26/88

[J-202-1987]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

DISTRICT COUNCIL 33, AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, AFL-CIO, by EARL STOUT, as Trustee ad Litem; and EARL STOUT; ALBERT JOHNSON; FRANCES ROONEY; ROBERT LUCAS; JAMES RAWLS; DONALD GALLIMORE; EDWARD SIMPKINS; LEONARD TILGHMAN; ANN COHEN; GEORGE WROTEN; and EARL WILLIAMS, Trustees of DISTRICT COUNCIL 33 MUNICIPAL WORKERS HEALTH AND WELFARE FUND 3001 Walnut Street, PHILADELPHIA, Pennsylvania, 19104	:	No. 32 Eastern District Appeal Docket, 1987
Appellants	:	Appeal from the Judgment of the Superior Court of Pennsylvania, entered April 25, 1986 at No. 2016, Philadelphia 1985, from an Order of the Court of Common Pleas, Civil Division, Philadelphia County at No. 3504 January Term, 1983.
v.	:	
CITY OF PHILADELPHIA 1401 Arch Street Room 812 Philadelphia, Pennsylvania 19107	:	354 Pa.Super. 176, 511 A.2d 818 (1986)
	:	Argued: November 10, 1987

OPINION OF THE COURT

Mr. Justice Flaherty Filed: February 26, 1988

This is an appeal from an order of the Superior Court which affirmed a grant of injunctive relief by the Court of Common Pleas of Philadelphia requiring that the City of Philadelphia make certain payments for health insurance benefits to the Municipal Workers Health and Welfare Fund maintained by District Council 33 of the American Federation of State, County, and Municipal

Employees. The duty to make the payments arose under provisions of the 1982-1984 Collective Bargaining Agreement between the City and District Council 33. At issue in the proceedings below were the extent of medical coverage that the City was obligated to provide for its municipal employees and questions as to the cost of such coverage.

In the Court of Common Pleas, the chancellor concluded that the City was contractually obligated to pay for "full 100% coverage" of all medical expenses (i.e., 365 day in-patient hospitalization with no co-pay provisions or obligations, no deductibles, no cap on the total amount of coverage for health and medical care for each union member and dependent family members, and full and complete payment of all hospital, medical, and doctor bills). The instant appeal arises as a result of the fact that, after determing that "full 100% coverage" was due, the chancellor proceeded to make findings pertaining to the cost of such coverage, but, in so doing, made findings which District Council 33, appellant herein, claims to be inherently inconsistent and unsustainable.[1] We agree that the chancellor's findings regarding the cost of medical coverage cannot be sustained.

It is well established that, in reviewing the findings of fact below, a finding which is inconsistent with another as to a material matter cannot be sustained. *Kaufmann's Estate*, 281 Pa. 519, 523, 127 A. 133 (1924). See also *Gassner v. Gassner*, 280 Pa. 313, 318,

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1. This Court denied a Petition for Allowance of Appeal filed by the City, which involved the City's contractual obligations to provide extensive medical coverage benefits under the 1982-1984 Collective Bargaining Agreement, thus denying the City's attempt to obtain further review of its contractual obligations regarding such coverage. The Petition for Allowance of Appeal filed by District Council 33 was, however, granted. District Council 33 has raised only the issue of whether the costs of medical coverage were properly determined by the Court of Common Pleas.

124 A. 483 (1924). In the present case, the chancellor set forth findings of fact which expressly accepted as credible and controlling the expert testimony provided by a witness for District Council 33, such witness having been a specialist in actuarial and insurance matters from the accounting firm of Price Waterhouse. The witness testified regarding the cost of providing "full 100% coverage" of medical expenses for the municipal employees in question. The need to make such findings arose because the extensive coverage which the City had agreed to provide its employees, through payments to the Municipal Workers Health and Welfare Fund, was unparalleled by existing medical coverage plans, and, thus, there was not in existence any rate schedule that could be referred to for the exact cost of providing such beneifts.

An internal inconsistency in the findings of the chancellor arose in that the findings expressly purported to be adhering to the testimony of the expert witness from Price Waterhouse, but the findings set forth cost determinations that ignored essential aspects of that same testimony. Specifically, the findings that contained the inconsistencies were the following:

> After a review of the testimony and opinion of witnesses, and a study of the reports of the respective experts, the court is persuaded by the opinion of [District 33's] expert, Price Waterhouse. The court's preliminary order [setting the level of the City's payments to the Municipal Workers Health and Welfare Fund] was based on a projection of cost of the Blue Cross plan which most closely approximated the coverage extended . . . . A more detailed projection of the data relating to the same plan based upon the Price, Waterhouse report persuades the court that a more accurate estimation of the requirements of the [City's] obligation under the Collective Bargaining Agreement would be $157.00

per member per month during the period January, 1983 to June, 1983 and $188.00 per member per month during the period July, 1983 to June, 1984. . . .

The Blue Cross plan referred to in the finding of fact was Blue Cross Plan 100, which provided extensive benefits coverage, but which fell short of providing the "full 100% coverage" that the City was contractually bound to pay for under the Collective Bargaining Agreement. Thus, the rates charged for Blue Cross Plan 100 were a mere approximation of the higher level of rates that would be incurred for the Municipal Workers Health and Welfare Fund to supply "full 100% coverage," according to the testimony of the expert witness from Price Waterhouse. The facts that Blue Cross Plan 100 was the most comprehensive program offered by Blue Shield and that the municipal employees were entitled to more extensive coverage than Blue Cross Plan 100 afforded were expressly stated in the findings. The findings also noted, "The employees who are members of District Council 33 have . . . an extraordinarily generous health and welfare plan. It certainly exceeds the coverage customarily offered by other commercial or non-profit health insurance providers."

Although the testimony of the expert witness clearly stated that it was necessary to make adjustments in the monthly rate quotations for Blue Cross Plan 100 in order to reflect the higher level of benefits due the municipal employees in question, such benefits having been perhaps aptly characterized by the chancellor as "extraordinarily generous," the chancellor failed to make any such adjustments. Rather, the City was ordered to pay the amounts set forth in the findings of fact, supra, consisting of $157.00 per employee per month during the period January, 1983 to June, 1983 and $188.00 per employee per month during the period July, 1983 to June, 1984, these being the estimated costs of providing

Blue Cross Plan 100 coverage. If the rate adjustments had been made as proposed by the expert witness, so as to provide for "full 100% coverage," the rates for these periods would have been, respectively, $181.00 and $216.00 per member per month.

In short, payment was ordered for amounts that did not, based upon the findings of the chancellor, correspond to the "full 100% coverage" that municipal employees were held to be entitled to receive. Further, while finding that the expert testimony from Price Waterhouse was to be followed in setting the amounts to be paid for medical coverage, the chancellor ordered payment of amounts that did not correspond to that testimony. Under these circumstances, the order specifying payments must be reversed and the case remanded to the Court of Common Pleas for correction of its findings and for entry of an order that is consistent with those findings.[2]

Order reversed, and case remanded.

Mr. Justice McDermott files a Concurring Opinion.

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2. We find no merit in the City's contention, now raised for the first time, that the Court of Common Pleas lacked subject matter jurisdiction in this case. Although the Public Employe Relations Act, 43 P.S. §1101.1301, vests the Pennsylvania Labor Relations Board with exclusive original jurisdiction in cases where redress is sought for unfair labor practices enumerated in the Act, it is well established that equitable jurisdiction exists in the Court of Common Pleas where, as in the present case, a union seeks judicial enforcement of a labor contract. *Hollinger v. Dept. of Public Welfare*, 469 Pa. 358, 365 n.10, 367, 365 A.2d 1245, 1249 n.10, 1250 (1976).

[J-202-87]

IN THE SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

DISTRICT COUNCIL 33, AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, AFL-CIO, by EARL STOUT, as Trustee ad Litem; and EARL STOUT; ALBERT JOHNSON; FRANCES ROONEY; ROBERT LUCAS; JAMES RAWLS; DONALD GALLIMORE; EDWARD SIMPKINS; LEONARD TILGHMAN; ANN COHEN; GEORGE WROTEN; and EARL WILLIAMS, Trustees of DISTRICT COUNCIL 33 MUNICIPAL WORKERS HEALTH AND WELFARE FUND 3001 Walnut Street, Philadelphia, Pennsylvania, 19104, *Appellants*	NO. 32 E.D. Appeal Dkt. 1987
vs	Appeal from the Judgment Order and Opinion of the Superior Court of Pennsylvania, in No. 2016, Philadelphia 1985, which was entered and filed on April 25, 1986, from an Order of the Court of Common Pleas, Civil Division, Philadelphia County at No. 3504 January Term, 1985
CITY OF PHILADELPHIA 1401 Arch Street Room 812 Philadelphia, Pennsylvania 19107	354 Pa.Super. 176, 511 A.2d 818 (1986) ARGUED: November 10, 1987

CONCURRING OPINION

Mr. Justice McDermott Filed: February 26, 1988

On the extremely limited issue which has been brought before us, regarding the cost of providing "full 100% coverage," I am constrained to agree with the majority that the arbitrator's findings of fact cannot be sustained. I therefore concur in the result.